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BEFORE THE
FEDERAL AVIATION ADMINISTRATION

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Notice of Alternative Policy
Options for Managing Capacity
at LaGuardia Airport and
Proposed Extension of the
Lottery Allocation –
Phase One

Docket Nos. FAA-2001-9852 and 9854

FAA-01-9852-22
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COMMENTS OF AMERICAN TRANS AIR, INC.

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I. Introduction

American Trans Air, Inc. (“ATA”) respectfully submits its comments on the FAA’s proposed Phase One Lottery to allocate seventeen slots at LaGuardia Airport. ATA’s overriding concern is that arbitrarily limiting the proposed slot lottery to just those new entrant carriers which drew three or fewer slots in last December’s lottery would exclude the majority of new entrant carriers, including ATA, which have yet to obtain sufficient LaGuardia slots to operate the ten roundtrips explicitly contemplated by AIR-21.¹ At the same time, while excluding the majority of new entrant carriers, the proposal would allow the express carrier affiliates of American, Continental, Delta and USAirways, each of which operates far in excess of ten daily roundtrips, to nonetheless participate in the proposed slot lottery.

The eligibility limitations for the slot lottery should be revised to permit each new entrant carrier, subject to limitations later discussed, to draw one pair of slots – one of

¹ 49 U.S.C. § 41716 (b).

which should be a “wild card” slot² – until the total number of slots held by new entrant carriers equals the total number currently operated by the four express carrier affiliates. That approach would maximize competition by broadening the distribution of currently available AIR-21 slots among new entrant carriers and also restore the careful balance contemplated by AIR-21 between new entrant and small community express carriers.³ The FAA meticulously adhered to that balance in its December 4, 2000 lottery by evenly allocating eighty of the 159 AIR-21 slots to the four express carrier affiliates and seventy-nine to new entrant carriers. That balance, however, has since decidedly tipped in favor of the four express carrier affiliates. The express carrier affiliates are now using seventy-nine AIR-21 slots while the new entrant carriers are using just sixty-three. The revised lottery approach suggested by ATA would allow as many as eight new entrant carriers, including carriers which today are providing strong new competition in a number LaGuardia markets, to select one pair of additional LaGuardia slots. ATA also wants to make clear that it is fully prepared to commence additional LaGuardia service no later than October 1—a date consistent with making absolutely certain that the unused lottery slots are promptly put to their most efficient use and that competition is maximized. That restoration of sixteen slots to the new entrant class of carriers would restore the delicate balance the FAA achieved last December between new entrant carriers and the express carrier affiliates.

² The FAA’s Notice states that it will allow each of the new entrant carriers to select additional slots without regard to the seventy-five operations per hour cap except that certain “peak of the peak” periods such as 1700 and 1800 hours may be further restricted. 66 Fed. Reg. 31735, June 12, 2001.

³ 49 U.S.C. § 41716 (a) and (b).

By expanding the class of eligible new entrant carriers to permit as many as eight carriers to draw one pair of slots, with one being a “wild card” slot, the FAA would both broaden the distribution of slots among the class of new entrant carriers as well as enhance vitally important competition where it is most needed – in slot-restricted markets in which the larger major carriers control the vast majority of all slots. While ATA is always proud to extol its exemplary accomplishments at LaGuardia as the airline that carries the greatest number of passengers per flight, as the airline that offers the greatest number of seats per flight and as the airline which operates at the lowest average fare - which in 2000 alone saved consumers more than \$29 million⁴ - other new entrant carriers also offer significant new competitive services and low fares at LaGuardia. These carriers have as much right as a carrier such as Vanguard to be included in the proposed lottery subject to certain limitations later discussed.

In formulating its suggested approach which would result in most of the seventeen remaining slots being allocated to new entrant carriers, ATA was mindful that AIR-21 had a dual focus – to enhance regional jet service between smaller communities and LaGuardia as well as promote entry to LaGuardia by new entrant carriers. That two-pronged objective was underscored by the FAA’s virtually equal division of the 159 AIR-21 slots distributed in last December’s lottery. It is that very balance between small

⁴ Those savings in fact only reflect ATA’s lower fares in just three LaGuardia markets, two of which ATA serves on a one-stop basis—LGA-CHI (\$21.5 MM), LGA-LAX (\$4 MM) and LGA-SFO (\$3.6 MM). *See* Attachment 1. In addition, ATA only initiated its last three LGA roundtrips in the fall of 2000 which means that the fare savings calculations for 2000 significantly understate the current fare savings being realized.

community service needs and entry by new entrant carriers that ATA's approach would restore while also maximizing competition at LaGuardia.

It is also important to emphasize that the express carrier affiliates have other immediately available options to enhance small community service. The FAA's Notice makes clear that the affiliated carriers' small aircraft operations now constitute the fastest growing segment of all LaGuardia operations. 66 Fed. Reg. 31734, June 12, 2001. It is further widely recognized that the major carriers have arranged in increasing numbers to have their express carrier affiliates use their valuable LaGuardia slots to provide duplicative service to large and medium hub markets, all of which also receive service with large jet aircraft. ATA has identified sixty-one such RJ flights, twenty-three and sixteen of which are operated by American Eagle and Delta Express, respectively. While the FAA, in its discretion, may choose not to address the substantial public policy question and adverse effect on smaller communities of this growing problem, ATA would respectfully suggest that a decision to require elimination of that deliberate misallocation of scarce LaGuardia slots could resolve the need of virtually any small community for LaGuardia service.⁵

The FAA's notice additionally explains that the seven new entrant slots initially assigned to Legend in last December's lottery, but later reallocated to the express carrier affiliates when Legend failed to initiate service, are being allowed to remain with the four

⁵ ATA would also suggest that there is a substantial difference between whatever the major carriers may have done – prior to the imposition of last fall's lottery – to use their LaGuardia slots to operate duplicative service and the major carriers' continuing expansion of the practice of misallocating these slots in the face of the LaGuardia delay crisis and the FAA's extraordinary decision to impose a lottery.

express carrier affiliates. However, had the FAA decided to place those same slots in the proposed lottery, the lottery could easily have been structured to afford all lottery participants that many more new slot opportunities. That benefit alone to the express carrier affiliates would justify completely excluding these carriers from the proposed lottery.

ATA next discusses each of its proposed revisions to the FAA's slot lottery in more detail.

II. The New Entrant Class of Lottery Participants Should Be Expanded to Include New Entrant Carriers That Are Operating Fewer Than Ten Roundtrip Flights

The FAA's proposal to limit the Phase One lottery to a relatively small number of new entrant carriers, principally including Vanguard, which received three or fewer slots in last December's lottery would unreasonably and unfairly penalize those new entrant carriers such as ATA that are serving LaGuardia with fewer than the ten roundtrips expressly contemplated by AIR-21. ATA is among the narrow class of new carriers that sought to take advantage of the AIR-21 opportunity for new entrant carriers, but that also did so in a responsible manner. ATA filed schedules to increase its then four roundtrip level of service to seven roundtrips with every intention of shortly thereafter increasing its service to the ten roundtrip ceiling imposed by AIR-21. Even though the express carrier affiliates were then announcing massive LaGuardia schedule increases, which in some instances approached 100 additional flights, ATA was unwilling to engage

in such transparent gamesmanship intended to precipitate the very delay crisis which ensued.

The fact that more than ninety percent of the additional flights at LaGuardia were proposed by the express carrier affiliates left no doubt about the cause of the delay problem. Indeed, in light of such behavior, the FAA would have been fully justified when structuring last December's lottery to provide the express carriers with far less than fifty percent of the slot allocations. However, by not doing so and by allowing express carriers to receive fifty percent of last December's slots, the FAA penalized, albeit indirectly, those carriers such as ATA whose only sin was to act responsibly as well as in the manner contemplated by the drafters of AIR-21. ATA and the other new entrant carriers were limited in last December's lottery to drawing slots limited to the number of flights for which they had filed schedules and requested slot allocations well before the actual lottery. As a result of that cut-off, ATA was permitted to draw slots for just three instead of the six additional AIR-21 roundtrips which ATA had intended to inaugurate. To now exclude ATA from the opportunity to receive even one additional roundtrip would doubly penalize ATA and the other similarly situated carriers operating fewer than ten roundtrip flights. That unfair consequence would also penalize the thousands of passengers who rely on these new entrant carriers for low fares to LaGuardia – fares which, in the case of ATA, generated more than \$29 million in consumer savings during 2000.

Rather than penalizing these carriers and their passengers, the FAA should restructure the proposed Phase One lottery to allow a broader class of new entrant carriers

to select one pair of additional slots, one of which would be a “wild card” slot. Whether that broader class should include every new entrant carrier operating less than ten roundtrips or whether the lottery cut-off point would have to be a lesser number is for the FAA to decide based on potentially eligible carriers and the availability of seventeen slots. Whatever the cut-off point, however, the FAA should certainly broaden the class of eligible participants among new entrant carriers.

ATA understands that broadening the class of eligible new entrant carriers to include those carriers such as ATA, which received four or more slots in last fall’s AIR-21 lottery, will almost certainly reduce the number that other new entrants with even fewer slots may receive. To those who would suggest that only those new entrant carriers with the fewest flights should be eligible to participate, the FAA has typically used broad carrier groupings when allocating slots. Last December’s lottery, for example, uniformly treated all new entrant carriers regardless of their number of pre-AIR-21 LaGuardia slots held by any of these carriers and regardless of the number of AIR-21 slots for which the new entrant carrier was eligible. That same broad grouping of carriers also extended to the major carriers’ express affiliates which were treated uniformly irrespective of the vastly different number of LaGuardia slots held by each express carrier and its affiliated major carrier. The procompetitive accomplishments at LaGuardia of new entrant carriers provide by themselves compelling public policy reasons to again broadly treat the class of new entrant carriers eligible to participate in the lottery.

ATA would also suggest that the FAA consider applying several additional limitations to the class of eligible participants –

- (a) a participant must have participated in last December's lottery;
- (b) a participant must not have returned or had to surrender for insufficient use any LaGuardia slots; and
- (c) a participant must appear in the Department of Transportations' latest Fare Survey as the lowest average fare carrier in at least one LaGuardia market.

Limiting eligibility to those carriers' who participated in last December's lottery will assure the widest possible distribution of LaGuardia slots among those carriers that "played by the rules" contemplated by AIR-21 and that have already once been penalized because of the uncontrolled appetites of the major carriers' express affiliates. These are also the same class of carriers which have worked assiduously to maximize the attractiveness of their limited frequency operations with low fares. In a perfect world, ATA would prefer that all new entrants receive ten roundtrips whether or not they were lottery participants last December. But with Phase Two and its much broader and longer-term structural remedies already under consideration, new entry by carriers which had not previously participated in last December's lottery should be deferred until Phase Two.

ATA also believes that the FAA should strive to maximize participation by those carriers which have offered the lowest average fare in at least one LaGuardia market⁶, as reflected in the DOT's latest Fare Survey or other available DOT data. One of the best empirical indications of the procompetitive value of a carrier's usage of a slot is the

⁶ ATA is not suggesting that the low fare new entrants be restricted to using a newly allocated slot to that city pair in which that carrier is already offering the lowest average fare. Rather, the demonstrated offering of the lowest average fare would only be a qualification for eligibility with that carrier then being given the flexibility to initiate low fare LaGuardia service in other LaGuardia markets.

average fare paid by consumers. While there may be other proxies for efficient slot utilization including aircraft size and the number of passengers per flight, the lowest average fare is certainly near the top of the list.

III. The FAA Is Entirely Justified in Placing the Major Carriers' Affiliated Express Carriers in the Second Round After The New Entrant Carriers Have Drawn Sixteen Slots

The FAA's proposal to place the express carrier affiliates in the second round of the lottery should not change regardless of the recent addition of the three returned Midway Airlines slots and any expansion of the class of new entrant carrier participants. Indeed, a persuasive case could even be made for the total exclusion of the express carrier affiliates from the Phase One lottery. Their massive schedule increases were the principal cause of last fall's LaGuardia delay crisis and these same carriers are also continuing to operate duplicative small aircraft service to large and medium hubs already served by large jet aircraft and they now operate the majority of allocated slots at LaGuardia. Specifically, there are usually 61 duplicative and, from an overall public policy perspective, misallocated frequencies operated by the express carrier affiliates of the larger major carriers. The breakdown of those frequencies among the major carrier affiliates is as follows:

| | |
|-------------|----|
| American | 23 |
| Delta | 16 |
| USAirways | 12 |
| Continental | 7 |

America West 3

Source: Attachment 2

If the FAA were to mandate just the partial elimination of these duplicative operations, there would almost certainly be enough slots to address the needs of virtually any small community for nonstop service to LaGuardia.

Beyond those connections, the express carrier and their affiliated major carriers now operate the vast majority of all LaGuardia slots. The FAA's decision to exclude the seven former Legend slots from the lottery and to leave them with the express carriers more than compensates for the express carrier's second round drawing status.

IV. Conclusion

WHEREFORE, American Trans Air, Inc., respectfully urges that the Federal Aviation Administration restructure its proposed Phase One lottery to broaden the class of eligible new entrant carriers so that at least eight such carriers are permitted to draw one additional pair of slots, one of which would be a "wild card" slot.

Respectfully submitted,

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LGA-CHI

| | |
|------------------------------|---------------|
| ATA Fare: | \$ 147.86 |
| Industry Fare (without ATA): | \$ 231.38 |
| Difference: | \$ 83.52 |
| ATA Passengers: | 257,760 |
| Savings due to ATA service: | \$ 21,528,115 |

LGA-LAX

| | |
|------------------------------|--------------|
| ATA Fare: | \$ 196.16 |
| Industry Fare (without ATA): | \$ 258.36 |
| Difference | \$ 62.20 |
| ATA Passengers: | 65,040 |
| Savings due to ATA service: | \$ 4,045,488 |

LGA-SFO

| | |
|------------------------------|--------------|
| ATA Fare: | \$ 197.99 |
| Industry Fare (without ATA): | \$ 303.86 |
| Difference | \$ 105.87 |
| ATA Passengers: | 34,250 |
| Savings due to ATA service: | \$ 3,626,048 |

Source: DOT O&D reports, 12 months ended December, 2000.

Duplicative Frequencies Operated
By
Express Carrier Affiliation Large and Medium Hub
LaGuardia Markets

| <u>LGA Nonstop Market</u> | <u>RJ Frequency</u> | | <u>Jet Frequency</u> | |
|-------------------------------|-------------------------|---------------------------|--------------------------|------------|
| BNB | 2 | DL-2 | 3 | AA-3 |
| BUF | 4 | CO-4 | 6 | US-6 |
| CLE | 6 | CO-3, AA-3 | 6 | CO-6 |
| CMH | 11 | HP-3, AA-4, US-1, DL-3 | 3 | US-3 |
| DTW | 4 | AA-4 | 11 | NK-2, NW-9 |
| GSO | 9 | DL-3, US-3, AA-3 | 3 | US-3 |
| IND | 8 | US-5, DL-3 | 2 | US-2 |
| JAX | 2 | DL-2 | 3 | US-3 |
| ORF | 3 | AA-3 | 2 | US-2 |
| RDU | 12 | AA-6, DL-3, US-3 | 10 | JI-6, US-4 |
| TOTAL: | <u>61</u> | | | |

*Source: August 2001 Schedule from OAG Max, July 2001.